

January 25, 2012

Brian W. Jones
Assemblymember, 77th District
P O Box 942849
Sacramento CA 94249-0077

Re: Your Request for Advice
Our file No. A-11-229

Dear Mr. Jones:

This letter responds to your request for advice regarding the honoraria provisions of the Political Reform Act (the "Act").¹

QUESTION

May you accept payment for talks and/or sermons given to church groups now that you are a member of the California Assembly?

CONCLUSION

If your talks are in fact sermons then you may accept payment. However, if the talks are not sermons that a pastor would normally deliver, accepting payment for the talks would be prohibited under the Act.

FACTS

You are a member of the California Assembly. You are requesting a follow-up advice letter to our Advice Letter No. A-11-164. In your previous request you stated that your question concerned honoraria for speaking to church groups. In that request you said that prior to your election to the Legislature, you were a paid staff member (associate pastor) for Sunrise Community Church in Santee, California (from 2001 to 2006). Your responsibilities included speaking to church groups about spiritual matters, as well as current affairs. You were also vice-president of your own commercial real estate company from 2006 to 2009 and dealt with church

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

properties. Part of your responsibility in that job was to speak to church groups regarding development and church business issues, and you were compensated for these speaking events.

You asked in your previous request if you may receive an honorarium for speaking to religious groups and gatherings that deal with the issues you described above. You were advised that you were prohibited from collecting honoraria for such speaking activities due to the fact that you were no longer employed in either of those professions and the sole activity of your new endeavor would be participating in speaking engagements.

In your new request you have provided more information. You now describe what you previously called speaking engagements as “sermons” and indicated that you will be acting as pastor when speaking to church groups. You have given the definition of “pastor” as “one who gives religious or moral instruction” that is presented in the form of a “sermon,” which you define as “a discourse for the purpose of religious instruction or exhortation, especially one based on a text of Scripture and delivered by a member of the clergy as part of a religious service.”

ANALYSIS

Section 89502(a) provides that “no elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.” As a member of the Assembly you are an elected state officer, therefore you may not accept any honorarium.

Section 89501 defines the term “honorarium,” in pertinent part, as follows:

“(a) For purposes of this chapter, “honorarium” means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

“(b) The term “honorarium” does not include:

“(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, *unless the sole or predominant activity of the business, trade, or profession is making speeches*. The Commission shall adopt regulations to implement this subdivision.”

“(2) Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the State Controller for donation to the General Fund, or in the case of a public official for local government agency, delivered to his or her agency for donation to an equivalent fund, without being claimed as a deduction from income for tax purposes.

Interpreting Section 89501(b)(1), Regulation 18932 provides:

“(a) ‘Honorarium’ does not include income earned from personal services if:

“(1) The services are provided in connection with an individual’s business or the individual’s practice of or employment in a *bona fide* business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to [Regulations 18932.1 through 18932.3]; and

“(2) The services are customarily provided in connection with the business, trade, or profession.” (Emphasis added.)

Regulation 18932.1(d) states that “a business whose predominant activity is making speeches is not ‘bona fide’ for purposes of [Section 89501 through 89506].”

We have advised in the past that a minister who continues his ministry and conducts church services after being hired as an employee of the Legislature is engaging in a bona fide business under the Act. (*Boatwright* Advice Letter No. A-93-323.) Therefore, if the talks you plan to give are “sermons” and you conduct them as a pastor for the church as an employment in a bona fide business, you would not be prohibited from collecting payment for these services under the Act. Your earnings are, however, subject to the reporting requirements of the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Sukhi K. Brar
Counsel, Legal Division

SKB:jgl